

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON

AMEMBASSY PARIS

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: CIVAIR: SEABOARD ROUTING PROBLEM

REF : (A) STATE 246048 (NOTAL) (B) LONDON 15868(NOTAL)

PARIS FOR U.S. CIVAIR DEL

1. UKG OBSTINANCE WITH RESPECT TO ITS POSITION ON
SEABOARD ROUTING, ITS UNILATERAL AND ARBITRARY
IMPLEMENTATION OF THAT POSITION AND THE QUESTIONABLE
REASONING IN SUPPORT OF THE POSITION INCORPORATED IN
ITS REPLY TO THE EMBASSY'S SEPT 2 NOTE CLEARLY REQUIRE
ONE MORE REITERATION FOR THE RECORD OF THE U.S. POSITION.
IT IS NEVERTHELESS BECOMING CLEAR THAT HOWEVER SOUND THE
U.S. POSITION MIGHT BE, THAT SOUNDNESS IS NOT GOING
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TO MOVE BRITISH FROM THEIR PRESENT COURSE OF ACTION.

THEREFORE, WHILE WE OBVIOUSLY HAVE LITTLE ENTHUSIASM FOR U.S. ACTION AGAINST BRITISH AIRWAYS, WE MUST NOW AT LEAST CONSIDER SUCH ACTION AS POSSIBLY ONLY MEANS OF CONVINCING BRITISH THAT U.S. CONSIDERS SEABOARD ROUTING AT ISSUE A RIGHT EXISTING UNDER PRESENT AGREEMENT AND A RIGHT THE U.S. DOES NOT INTEND PAYING FOR AGAIN IN FUTURE RENEGOTIATION. (CAB STAFF, FOR EXAMPLE, IS LOOKING INTO POSSIBILITY OF CANCELLING BRITISH AIRWAYS'

INTERLINE AGREEMENTS WITH US AIRLINES THAT PERMIT BRITISH AIRWAYS' TRANSATLANTIC CARGO CARRIAGE TO AND FROM US OFF-ROUTE POINTS AND THE UK. WE UNDERSTAND CAB MAY HAVE AUTHORITY TO TAKE SUCH A STEP WHICH IS PROCEDURALLY LESS FORMAL THAN PART 213 ACTION.) WOULD APPRECIATE EMBASSY AND RCAA COMMENTS WITH RESPECT TO ACTION AGAINST BRITISH AIRWAYS.

2. IN MEANTIME, SINCE RECORD ON ISSUE OF SEABOARD ROUTING MUST BE CLEARED UP AS RESULT OF BRITISH RESPONSE TO EMBASSY'S SEPTEMBER 2 NOTE, EMBASSY SHOULD FOLLOW UP WITH ANOTHER NOTE. SUGGESTED TEXT FOLLOWS. DEPARTMENT IS NOT COMMITTED TO TEXT AND WOULD APPRECIATE ANY COMMENTS EMBASSY AND US CIVAIR DEL WISH TO MAKE IN CONNECTION WITH IT.

BEGIN TEXT: "...AND REFERS TO THE NOTE OF OCTOBER 15, 1975 FROM THE PRINCIPAL SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS. THE USG CANNOT ACCEPT THE POSITION ADVANCED BY THE UKG THAT THE ASA OF 1946 AND SUBSEQUENT UNDERSTANDINGS BAR THE UPLIFT OF CARGO FROM LONDON TO NEW YORK AND THE DISCHARGE OF CARGO AT LONDON FROM NEW YORK IF IT IS TRANSPORTED ON US AIRCRAFT OPERATED TO AND FROM NEW YORK WHICH PASS THROUGH PARIS. THE USG TAKES THE POSITION THAT UNDER THE AGREEMENT THE RIGHT OF US AIRLINES TO TRANSPORT CARGO BETWEEN NEW YORK AND LONDON ON AIRCRAFT SO ROUTED IS CLEARLY ESTABLISHED BY THE AGREEMENT AND ANNEX III THERETO. FOOTNOTE (II) TO ANNEX III (B) AND THE UNDERSTANDING PERTAINING THERETO SET FORTH IN THE EXCHANGE BETWEEN THE TWO GOVERNMENTS OF MAY 27, 1966 IN NO WAY DEROGATE FROM THIS RIGHT SINCE THE TRAFFIC IN QUESTION, AS TRANSPORTED BY SEABOARD LIMITED OFFICIAL USE

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WORLD AIRLINES, IS NOT "PICKED-UP" NOR "SET DOWN" AT PARIS, NOR IS IT "STOP-OVER TRAFFIC" WITHIN THE CLEAR, COMMON MEANING OF THOSE TERMS. IN ANY EVENT, THE FURTHER UNDERSTANDING OF THE GOVERNMENTS OF MAY 27, 1966 ESTABLISHING THE RIGHT OF CARRIERS TO SERVE AS DESIRED "ANY, SEVERAL OR NO POINTS LISTED" IN COLUMNS 2, 3 AND 4 IN ANNEX III REMOVES ANY AMBIGUITY CONCERNING THE VALIDITY OF THE USG'S POSITION.

"MOREOVER, THE USG CANNOT ACCEPT THE IMPLICATION CONTAINED IN THE PRINCIPAL SECRETARY OF STATE'S NOTE THAT THE ABSENCE OF OFFICIAL US REPRESENTATIONS BEFORE AUGUST 1974 SUGGESTS THE US AUTHORITIES HELD THE UK INTERPRETATION TO BE CONSISTENT WITH THE ASA AND THE 1966 UNDERSTANDINGS. AS THE UKG MUST BE AWARE, NONE OF ITS EXPRESSIONS OF CONCERN REGARDING SEABOARD WORLD AIRLINES' SCHEDULES PRIOR TO AUGUST 1974 RELATED TO THE SPECIFIC ISSUE NOW AT

HAND. THE USG, THEREFORE, HAD NO REASON TO BELIEVE THE UKG HELD THE VIEW THAT THE ASA DID NOT AUTHORIZE THE ROUTING AT ISSUE-ESPECIALLY SINCE SEABOARD HAD BEEN ROUTING TRAFFIC IN THE MANNER NOW QUESTIONED SINCE 1966 WITHOUT ANY OBJECTION FROM THE UKG.

"THE USG UNDERSTANDS THAT THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, COMMERCIAL COURT, IN THE RECENT PROCEEDING BROUGHT BY SEABOARD WORLD AIRLINES AGAINST THE DOT ON THIS SAME SUBJECT HAS ISSUED A DECISION FAVORABLE TO SEABOARD. THE USG ALSO UNDERSTANDS THAT THIS DECISION WAS REACHED FOLLOWING THE FULL PARTICIPATION OF THE DOT AND THAT WHILE THAT DECISION IS PRESENTLY UNDER APPEAL, IT NEVERTHELESS CONTINUES TO BE IN EFFECT.

"THE USG MUST REITERATE THAT THE SUSPENSION OF SEABOARD WORLD AIRLINES' OPERATING PERMITS AND THE ISSUANCE OF TEMPORARY PERMITS WHICH IMPOSE RESTRICTIONS ON SEABOARD'S RIGHT TO UPLIFT AND DISCHARGE CARGO AT LONDON ARE CLEARLY PRECLUDED BY THE ASA OF 1946 AND THE SUBSEQUENT UNDERSTANDINGS OF 1966. THE DENIAL OF THE OPERATING RIGHTS THE US CARRIER DERIVES FROM THE ASA AND THE 1966 UNDERSTANDINGS HAS THE CLEAR EFFECT OF INCREASING THE COST LIMITED OFFICIAL USE

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OF OPERATIONS TO THE US CARRIER. SUCH DENIAL THEREFORE IS NOT ONLY INAPPROPRIATE FROM THE POINT OF VIEW OF THE ASA AND THE 1966 UNDERSTANDINGS, BUT APPEARS INAPPROPRIATE AS WELL AT A TIME WHEN PRESENT WORLD-WIDE FINANCIAL CONDITIONS SUGGEST THAT GOVERNMENTS SHOULD SEEK OPPORTUNITIES TO ENCOURAGE, RATHER THAN TO IMPEDE, THE EFFICIENT UTILIZATION OF CAPITAL RESOURCES.

"THE USG REITERATES ITS REQUEST THAT THE UKG AUTHORITIES TAKE EARLY STEPS TO REMOVE THE LIMITATIONS ON SEABOARD WORLD AIRLINES' OPERATING RIGHTS REFLECTED IN THE TEMPORARY OPERATING PERMITS ISSUED BY THE DOT AND THEREBY TO ENABLE THE CARRIER TO OPERATE IN ACCORDANCE WITH THE ASA OF 1946 AND THE UNDERSTANDINGS OF 1966." END TEXT. INGERSOLL

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